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August 8, 1997

Eugene H. Bull
Federal Election Commission
General Counsel's Office
Washington, D.C. 20463

Re: Paul and Debra LaPrade
MUR-4389

Dear Mr. Bull:

Please be advised that Debra and Paul LaPrade do not accept the General Counsel's recommendation that the Commission find reason to believe that the LaPrades violated 2 U.S.C. § 441(a)(1)(A).

Pursuant to 2 U.S.C. § 441(a)(1)(C), individuals are allowed to contribute \$5,000 to a political committee such as the Orange County Democratic Committee. Such contributions are lawful even if the contributor had earlier made the maximum allowable contribution to a particular candidate or his committee. Additionally, such contributions are lawful even if the contributor is a relative of a candidate who is supported by a political committee such as the Orange County Democratic Party.

From a review of the General Counsel's Factual and Legal Analysis, it appears that the only issue presented is whether the LaPrades contributed to the Orange County Democratic Committee with the knowledge that a substantial portion of their contribution would be expended by the Committee on behalf of Mr. Prince. See 11 C.F.R. § 110.1(h)(ii). At pages 4 through 5 of the Factual and Legal Analysis, the General Counsel concludes that there is reason to believe that the LaPrades made their contribution to the Committee with an understanding or knowledge that a substantial portion of the contribution would be expended on behalf of Mr. Prince for the following reasons:

1. Mr. Prince is the brother of Debra LaPrade and the LaPrade family had previously made maximum allowable contributions to Prince's campaign;
2. According to hearsay reported in a Los Angeles Times article, the contribution was given to the Democratic party to get out the votes;
3. Admissions by Debra LaPrade that she wanted to make contributions to the Democratic Committee for "voter awareness".

With all due respect, the above "facts" are far from sufficient to formulate a reason to believe that the LaPrades made their contribution to the Committee with the understanding or knowledge that a substantial portion of the contribution would be expended on behalf of Mr. Prince.

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The LaPrades' contributions to the Orange County Democratic Party were made to help the party increase Democratic voter awareness and to get the vote out. Obviously, any efforts to increase the Democratic voter turn out in the County would indirectly benefit any Democratic candidate including Mr. Prince. However, unless the LaPrades made their contribution with an understanding or knowledge that a substantial portion of the contribution would be expended on behalf of only Mr. Prince, their contributions did not violate 11 C.F.R. § 110.1(h)(1).

Apparently, the LaPrades' contribution was used to produce a mailer which the General Counsel believes only promoted the Prince candidacy. Assuming arguendo that that belief is accurate, the facts are uncontroverted that the LaPrades had no prior input or knowledge regarding how their contributions would be expended by the Democratic Committee.

As you are aware, James Toledano was the elected chair of the Orange County Democratic Committee. He is the individual who accepted the LaPrades contributions to the Committee. He is also the individual responsible for expending the funds and preparing the mailer in question. In his Declaration, which is attached as Exhibit 1, Mr. Toledano affirmatively states the following:

1. In his conversation with Debra LaPrade regarding her desire to contribute to the Orange County Democratic Party, there was no discussion as to how the money was to be spent;
2. The contribution was not earmarked by the LaPrades to support the Prince candidacy or any other candidacy;
3. After receiving the contribution, he designed the subject mailer on his home computer without any input whatsoever from the LaPrades;
4. The LaPrades made no suggestions of any kind as to the manner in which their contribution would be expended.

The General Counsel has essentially concluded that the LaPrades earmarked their contributions to the Democratic Committee for use on behalf of Mr. Prince and that the Committee served as a conduit. 11 C.F.R. § 110.6(b)(1) defines earmarked contributions as follows:

"For purposes of this section, earmarked means a designation, instruction, or encumbrance, whether direct or indirect, express or implied, oral or written, which results in all or any part of a contribution or expenditure being made to, or expended on behalf of, a clearly identified candidate or a candidate's authorized committee."

See also, Buckley v. Valeo, 425 U.S., 43-44 n.51, 96 S.Ct. 612, 646, n.51 (1976).

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According to the LaPrades and Mr. Toledano, the LaPrades' contributions were not designated for any identified candidate. The contributions were made by the LaPrades to the Democratic Committee to increase voter awareness and get out the Democratic vote. No further instructions were expressly or impliedly attached to the contributions. How the contributions were put to use or in what account they were deposited was totally at the discretion of the Democratic Committee (Mr. Toledano) with no input or suggestions by the LaPrades.

Based upon the above, there is no factual reason to believe that the LaPrades contributed to the Orange County Democratic Committee with knowledge that a substantial portion of their contribution would be expended on behalf of a particular candidate. I therefore request that the General Counsel's Office reconsider its position and recommend to the Commission that no further action be taken against the LaPrades in this matter.

Sincerely,



David M. Heller

DMH/dh
Enclosure

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DECLARATION OF JAMES TOLEDANO

James Toledano declares:

1. I am the elected Chair of the Orange County (California) Democratic Central Committee (aka Orange County Democratic Party). I have read the complaint filed by the Vice Chair of the California Republican Party in June. Mr. Schroeder's allegations under penalty of perjury are false in all relevant particulars.

2. I received on behalf of the Orange County Democratic Party, in my capacity as Chair of the Orange County Democratic Party, an unsolicited contribution of \$10,000 from Debra Lee LaPrade, in the form of a check apparently signed by Paul LaPrade. This was not the first, nor is it the last, unsolicited offer to contribute something of value to the Orange County Democratic Party which I have received in my capacity as Chair.

3. I expended this contribution as Chair of the Orange County Democratic Party for the purpose of advertising to high-propensity Democratic voters in central Orange County the fact that certain individuals were the Party-endorsed candidates in that area, in part to publicize the fact that the Orange County Democratic Party was alive and well, a fact not self-evident in recent political history in this County, in part to respond to complaints that the Party "never does anything" and in part to deal with confusion about who was the duly endorsed candidate in the 46th Congressional District on the basis of calls from concerned voters, in order to uphold the integrity of the endorsement process.

4. At no time did I discuss with Ms. LaPrade how the money was to be spent, her prior contributions to anyone or her obligations under any election laws. I did not know that Ms. LaPrade was Jim Prince's sister, and if I had known that she was Jim Prince's sister I most likely would not have taken the contribution because of the way it might have looked.

5. Ms. LaPrade did not ask me for advice on whether her contribution was legal and I had no information on which to base such advice. Had she asked me for advice or comment on whether her contribution was legal I would have declined to so advise her and would have referred her to her own lawyer(s), whomever they may have been. The issue never came up.

6. The expenditure was not "earmarked" by me or by anyone else to my knowledge for, or directed toward, or to support, the Prince candidacy or any other, but was spent to increase the visibility of the Orange County Democratic Party in the central County and to communicate with voters in the only

portion of Orange County in which Democrats hold a registration edge.

7. I designed the mailer myself on my Macintosh computer at home without any input whatsoever from Ms. LaPrade and I made all of the decisions on what it should say and how it should be said. Ms. LaPrade offered no suggestions of any kind as to the manner in which I should use the money and I would not have allowed her to tell me what to do if she had attempted to do so. I did not speak with Jim Prince or the Prince campaign about the contribution or the mailer except to request a photograph; I was referred to a photographer who ultimately delivered a photograph to the printer.

8. I deposited the check into a new account which I opened for that purpose in the branch of the bank in which another Democratic Party account is located which is next door to my office. I chose to open a separate account because the Orange County Democratic Party ordinarily opens separate accounts for special projects, to keep them separate from operating funds, and because the then-Treasurer was extraordinarily difficult to locate if you wanted to make a deposit or get a check, and there were numerous instances of checks not being deposited for months or at all.

9. I take no responsibility for any actions or positions taken by the Orange County Democratic Central Committee or its Executive Committee, or any member of either, nor do I necessarily accept or concur in any actions or positions taken, in respect to the contribution, my acceptance of the contribution, or my expenditure of the contribution.

10. The article in the Los Angeles Times which Mr. Schroeder enclosed with his complaint is false and defamatory and contains statements attributed to me which I neither said nor would ever say, to which the comments above are in some measure addressed. I did not knowingly, willfully or intentionally accept an illegal contribution, fail to report the transaction, nor fail to include appropriate notice language, nor did I commit any act which was knowingly, willfully or intentionally contrary to law, nor do I believe that any act of mine was contrary to law.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct and that this declaration was executed on July 25, 1996, at Irvine, California.


JAMES TOLAND